CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1930

No. ~~480~~ 14

WILLIAM A. SHERMAN, M. F. COCHRANE, AND J. B. SANFORD, CONSTITUTING THE BOARD OF STATE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA, ETC.,

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED MAY 5, 1930

(34,617)

(34,617)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 486

WILLIAM A. SHERMAN, M. F. COCHRANE, AND J. B. SANFORD, CONSTITUTING THE BOARD OF STATE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA, ETC.,

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF ATTORNEYS OF RECORD.

LEON E. MORRIS, Esq., Crocker First National Bank Bldg., San Francisco, California,
Attorney for Appellants.

GEO. J. HATFIELD, Esq., United States Attorney, Post Office Bldg., San Francisco, California,
Attorney for Appellee.

In the District Court of the United States for the Northern District of California, Southern Division.

No. 17,435.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM A. SHERMAN, M. F. COCHRANE and J. B. SANFORD, Constituting THE BOARD OF STATE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA, Operating THE STATE BELT RAILROAD.

Defendants.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction [2] of this court, when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the lift arm of the uncoupling lever being missing from said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

For a third cause of action plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on October 16, 1925, hauled on its standard gauge line of railroad one freight car, to wit: S. P. gon-

dola No. 53261, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the height of the drawbar on the "A" end of said car, measured perpendicularly from the level of the tops of the rails to the center line of said drawbar, was thirty (30) inches, and when the height of said drawbar should not have been less than thirty-one and one-half (31½) inches, as prescribed by an order of the Interstate Commerce Commission of October 10, 1910, which order was made in pursuance of the provisions and requirements of Section 3 of the aforesaid Act of April 14, 1910. [3]

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars.

For a fourth cause of action plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531) as amended by an Act approved April 1, 1896 (contained in 29 Statutes

at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on October 16, 1925, hauled on its line of railroad one car, to wit: W. P. box No. 15049, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the uncoupling lever keeper on the said end of said car being broken, this necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

For a fifth cause of action plaintiff alleges that defendant [4] is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on Oceober 17, 1925, hauled on its line of railroad one car, to wit: W. P. box No. 30114, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "A" end of said car was out of repair and inoperative, the end casting on the said end of said car being broken, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

For a sixth cause of action plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of [5] Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on October 19, 1925, hauled on its line of railroad one car, to wit: S. F. M. I. & M. Co. flat No. 4020, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the hand-brake on said car was out of repair and inefficient, the hand brake shaft being bent, and when said car was not equipped with an efficient hand brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars.

For a seventh cause of action plaintiff alleges that said defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress approved April 14, 1910 (contained in 36 Statutes at Large, page 298), said defendant, on October 22, 1925, hauled on its line of railroad one car, to wit: U. C. R. gondola No. 20031, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date said defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the hand-brake on said car was out of repair and inefficient, the hand brake chain being broken, and when said car was not equipped with an efficient hand-brake, as required by Section 2 of the aforesaid Act of April 14, 1910.

Plaintiff further alleges that by reason of the violation of [6] said Act of Congress, said defendant is liable to plaintiff in the sum of one hundred dollars.

For an eighth cause of action, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at

Large, page 943), defendant, on October 23, 1925, hauled on its line of railroad one car, to wit: U. C. M. X. flat No. 69087, over a part of a highway of interstate commerce.

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the uncoupling lever and lock lift being missing from said end of said car, thus necessitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars. [7]

For a ninth cause of action, plaintiff alleges that defendant is, and was during all the times mentioned herein, a common carrier engaged in interstate commerce by railroad in the State of California.

Plaintiff further alleges that in violation of the Act of Congress known as the Safety Appliance

Act, approved March 2, 1893 (contained in 27 Statutes at Large, page 531), as amended by an Act approved April 1, 1896 (contained in 29 Statutes at Large, page 85), and as amended by an Act approved March 2, 1903 (contained in 32 Statutes at Large, page 943), defendant, on October 26, 1925, hauled on its line of railroad one car, to wit: S. P. box No. 84500, *over a*

Plaintiff further alleges that on said date defendant hauled said car as aforesaid over its line of railroad in and about San Francisco, in the State of California, within the jurisdiction of this court, when the coupling and uncoupling apparatus on the "B" end of said car was out of repair and inoperative, the lock lift being disconnected from lock block of coupler on said end of said car, thus necesitating a man or men going between the ends of the cars to couple or uncouple them, and when said car was not equipped with couplers coupling automatically by impact, and which could be uncoupled without the necessity of a man or men going between the ends of the cars, as required by Section 2 of the Safety Appliance Act, as amended by Section 1 of the Act of March 2, 1903.

Plaintiff further alleges that by reason of the violation of the said Act of Congress, as amended, defendant is liable to plaintiff in the sum of one hundred dollars.

WHEREFORE, plaintiff prays judgment against said defendants in the sum of nine hundred dollars and its costs herein expended.

GEORGE J. HATFIELD,
United States Attorney.

[Endorsed]: Filed Nov. 17, 1925. [8]

[Title of Court and Cause.]

NOTICE OF MOTION TO DISMISS.

To the Plaintiff Herein, and to Geo. J. Hatfield, Esq., Its Attorney:

You and each of you will please take notice that the defendants herein, the Board of State Harbor Commissioners of the State of California, through its attorney, having appeared specially for the purpose of objecting to the jurisdiction of this court, will on Monday, the 14th day of December, 1925, at the hour of ten o'clock A. M., or as soon thereafter as counsel can be heard, at the courtroom of said District Court, Second Division thereof, in the Post Office Building, 7th and Mission Streets, at San Francisco, California, move said court to dismiss the above-entitled action on the following grounds:

I.

That said court has no jurisdiction over said defendants.

II.

That said court has no jurisdiction over said de-

fendants as to the matters and things set forth in said complaint because of the fact that the Constitution of the United States forbids a [9] state being sued without its consent in any court except the Supreme Court of the United States.

III.

That said court has no jurisdiction of the matters involved in this action, in that said action is one between the United States of America and the State of California; and that the proper place of trial is the Supreme Court of the United States.

IV.

That said court has no jurisdiction over the defendants herein sued as the Board of State Harbor Commissioners of the State of California, a political arm or agency of the State of California, in that said defendants are merely officers of the State of California and acting as such as and for and in behalf of the People of the State of California; and further in that said action is between the United States of America and the State of California in violation of Art. III, Sec. 2 of the Constitution of the United States.

V.

That the complaint in this action is without sufficient facts to constitute a cause of action.

VI.

That William A. Sherman, M. F. Cochrane and J. B. Sanford, as and constituting the Board of State Harbor Commissioners of the State of Cali-

fornia, collectively as individuals, or as said Board, or separately as individuals, are not amenable, while acting as such Board of State Harbor Commissioners and representing the People of the State of California, and while carrying out the laws of the State of California,—to any jurisdiction other than the Supreme Court of the United States, or any laws other than those of the State of California, and is violative of the first ten amendments to the Constitution of the United States. [10]

VII.

That the State of California as a sovereign state, and as represented by said Board of State Harbor Commissioners, is immune from suits and can not be sued without its consent in any court of the United States other than the Supreme Court of the United States; and that said action is in violation of the Eleventh Amendment to the Constitution of the United States.

VIII.

That it does not appear, nor can it be ascertained, from the complaint on file herein, how or in what manner, or at what times the defendants herein were operating said Belt Railroad as "common carriers engaged in interstate commerce by railroad in the State of California."

Said motion will be made upon the grounds hereinbefore set forth.

Said motion will be based upon this notice of motion and upon all the papers, files, records and

proceedings in this action to which reference is hereby made for the purpose of this motion.

Dated: December 5, 1925.

W. T. PLUNKETT,

Attorney for Defendants William A. Sherman, M. F. Cochrane and J. B. Sanford, Constituting the Board of State Harbor Commissioners of the State of California, Operating the State Belt Railroad.

Service of the within notice by copy admitted this 5 day of Dec., 1925.

GEORGE J. HATFIELD,
Attorney for Plaintiff.

[Endorsed]: Filed Dec. 5, 1925. [11]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, on Thursday, the 15th day of March, in the year of our Lord one thousand nine hundred and twenty-eight. Present: The Honorable FRANK H. KERRIGAN, District Judge.

[Title of Cause.]

MINUTES OF COURT—MARCH 15, 1928—ORDER OVERRULING DEMURRER.

After hearing R. M. Lyman, Esq., Assistant United States Attorney, IT IS ORDERED that the

demurrer to the complaint herein be and the same is hereby overruled, * * * [12]

[Title of Court and Cause.]

ANSWER.

Come now defendants above named and not waiving any objection to the jurisdiction of this court heretofore made, answer the complaint of plaintiff, and deny and allege as follows, to wit:

I.

Defendants, and each of them, deny, generally and specifically, each and every, all and singular, the allegations in said complaint, and each and every cause of action thereof contained.

And as and for a second, separate and distinct answer and defense to plaintiff's complaint, and each and every cause of action therein contained, defendants deny and allege as follows, to wit:

I.

Defendants allege that at the times mentioned in plaintiff's complaint, they were the duly appointed and acting Board of State Harbor Commissioners of the State of California, and that all acts done by them as such Harbor Commissioners, were done and performed as a political arm or agency of the State of California, in the performance [13] and exercise of a Governmental function of the State of California.

That the State Belt Railroad is owned and operated by the State of California, and that this action against defendants constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, is an action against the State of California.

III.

That this court has no jurisdiction over an action by the United States of America against the State of California; that the Supreme Court of the United States is the only court having jurisdiction over such an action.

And as and for a third, separate and distinct answer and defense to plaintiff's complaint, and each and every cause of action therein contained, defendants deny and allege as follows, to wit:

I.

Defendants hereby refer to each and every, all and singular the allegations contained in Paragraphs I and II of their second separate answer and defense hereinabove contained, and by such reference make the same a part hereof of the same force and effect as if set forth in full herein.

II.

That the Acts of Congress specified in plaintiff's complaint, to wit, Federal Safety Appliance Acts, provide that common carriers violating the provisions of said acts shall be liable to a penalty therefor.

III.

Defendants deny that the United States of America has any right to assess a penalty against, or collect a penalty from, the [14] State of California, and allege that the State of California is immune from suits to enforce or collect such a penalty.

And as and for a fourth, separate and distinct answer and defense to plaintiff's complaint, and each and every cause of action therein contained, defendants deny and allege as follows, to wit:

I.

Defendants, and each and all of them, deny that at the times mentioned in plaintiff's complaint, or any of them, they, or any of them, were a common carrier engaged in interstate commerce by railroad in the State of California, or elsewhere.

II.

Defendants allege that the State Belt Railroad was, at all the times mentioned in plaintiff's complaint, and now is, owned and operated by the State of California; that if said State Belt Railroad is a common carrier engaged in interstate commerce, then the State of California is the said common carrier.

III.

That the Acts of Congress, to wit, the Federal Safety Appliance Acts alleged in plaintiff's complaint make the matters therein alleged unlawful for any common carrier and provide that any common

carrier violating the provisions of said Acts shall be liable to a penalty. None of the Federal Safety Appliance Acts referred to in plaintiff's complaint authorize or provide for the assessment of any penalty against any officer or employee of the common carrier, or against any individual whatsoever, other than the common carrier itself.

IV.

Defendants deny that they, or any of them, individually, are liable to plaintiff for any penalty under the said Federal Safety Appliance Acts and deny that said Federal Safety Appliance Acts [15] authorize or provide for the assessment or collection of any penalty against them individually.

And as and for a fifth, separate and distinct answer and defense to plaintiff's complaint, and each and every cause of action therein contained, defendants deny and allege as follows, to wit:

I.

Defendants, and each and all of them, deny that at the times mentioned in plaintiff's complaint, or ever, or at all, they personally operated or supervised the operation of the State Belt Railroad and deny that they personally participated in or had any personal knowledge whatsoever of the commission of any of the alleged violations of the Federal Safety Appliance Act set forth in the causes of action, or any of them, in plaintiff's complaint.

Defendants allege that if the violations of the Federal Safety Appliance Act alleged in plaintiff's

complaint, or any of them, occurred, the said violations so occurred without the personal knowledge of defendants, or any of them, and without the consent of defendants, or any of them, and contrary to the orders and instructions of defendants.

II.

That the said State Belt Railroad is operated under the immediate supervision of superintendent and by subordinate employees, to wit, inspectors, engineers, yardmen, etc., all of whom are civil service employees, except in cases of emergency employment, and that said superintendent and employees, and all of them, were properly employed and were and are in the service of the State of California.

III.

Defendants deny that they, or any of them, are liable to plaintiff in the sum specified in plaintiff's complaint, or any sum, by reason of any violations of said Acts of Congress specified in [16] said complaint, to wit, the Federal Safety Appliance Acts.

And as and for a sixth, separate and distinct answer and defense to plaintiff's complaint, and each and every cause of action therein contained, defendants deny and allege as follows, to wit:

I.

Defendants allege that subsequent to the times mentioned in plaintiff's complaint, and subsequent to the commencement of the above-entitled ac-

tion, they were succeeded in office as the Board of State Harbor Commissioners of the State of California by C. L. Tilden, Frank C. Sykes and Paul Scharrenberg, and that said C. L. Tilden, Frank C. Sykes and Paul Scharrenberg ever since their said appointments, have been and now are, the duly qualified and acting Board of State Harbor Commissioners of the State of California.

WHEREFORE, defendants pray that plaintiff take nothing by this action, and that they be hence dismissed and have judgment against plaintiff for their costs of suit herein expended, and for such other and further relief as to the Court may seem proper.

LEON E. MORRIS,
Attorney for Defendants.

Due service and receipt of a copy of the foregoing answer is hereby admitted this 25th day of July, 1928, and IT IS HEREBY STIPULATED that specific denials of the allegations of the complaint and verification of the answer be, and they hereby are, waived.

GEO. J. HATFIELD,
United States Attorney,
By R. M. LYMAN, Jr.,
Assistant United States Attorney,
M. C. LIST,
Special Assistant to the United States Attorney,
Attorneys for Plaintiff.
LEON E. MORRIS,
Attorney for Defendants.

[Endorsed]: Filed July 25th, 1928. [17]

In the Southern Division of the United States District Court for the Northern District of California.

No. 17,435.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM A. SHERMAN, M. F. COCHRANE and J. B. SANFORD, Constituting THE BOARD OF STATE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA, Operating THE STATE BELT RAILROAD.

Defendants.

JUDGMENT.

This cause having been submitted to the Court upon a stipulation of facts, and the Court, after due deliberation having rendered its decision and ordered that judgment be entered herein in favor of plaintiff and against the defendants for the sum of nine hundred and no/100 ($900.00) dollars, and for costs:

Now there*of*, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that United States of America, Plaintiff, do have and recover of and from William A. Sherman M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad,

Defendants, the sum of nine hundred and no/100 ($900.00) dollars, together with its costs herein expended taxed at $26.60.

Judgment entered February 25th, 1929.

WALTER B. MALING,
Clerk. [32]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 25th day of November, 1925, the above-entitled action was commenced by the filing of a complaint and the issuance of a summons; that thereafter, and on or about the 5th day of December, 1925, defendants appeared therein and filed a motion to dismiss said action, which said motion was thereafter, to wit, on or about the 15th day of June, 1927, noticed for hearing by the attorney for plaintiff as a demurrer and was set down for hearing by said Court, and the hearing thereof regularly continued from time to time thereafter;

AND BE IT FURTHER REMEMBERED that on the 15th day of March, 1928, the above-entitled court, Honorable Frank H. Kerrigan, United States District Judge, presiding, duly and regularly made and filed an order overruling the demurrer of defendants to said complaint.

Thereupon, defendants moved and obtained leave to file and did file and answer to the complaint on file in said action; [33]

AND BE IT FURTHER REMEMBERED that the above-entitled cause came on regularly for trial before the above-entitled court sitting without a jury, a jury having been waived by both parties, on July 25th, 1928, Honorable A. F. St. Sure, United States District Judge, presiding, Richard M. Lyman, Jr., Esq., Assistant United States Attorney, appearing as attorney for plaintiff, and Leon E. Morris, Esq., appearing as attorney for defendants, whereupon the following proceedings were had.

The parties thereupon made and filed the following stipulation in writing:

(Title of Court and Cause.)

WAIVER OF JURY AND STIPULATION OF FACTS.

Come now the plaintiff and defendants in the above numbered and styled cause by their respective attorneys and hereby stipulate and agree:

1. That this cause may be heard and determined by the Court, a jury being expressly waived.

2. That the following may be considered by the Court as facts in the case in any trial thereof, to have the same weight and effect as if oral testimony or documentary evidence had been introduced to prove the same.

I.

That defendants were, during the times mentioned in the said causes of action, and each of them, the duly qualified and acting Board of State

Harbor Commissioners of the State of California. That the said Board of State Harbor Commissioners are officers of the State of California, appointed by the Governor, confirmed by the Senate of the State of California, and hold office at the pleasure of the Governor. [34]

That said Board of State Harbor Commissioners as officers of the State of California, have charge of the administration of the Harbor of San Francisco, California, and in connection therewith, of the administration of the State Belt Railroad; that said State Belt Railroad is owned and operated by the State of California and is located wholly within the city and county of San Francisco, and that all of the property administered by the Board of State Harbor Commissioners is owned by the State of California.

That all revenue received for services rendered by the State Belt Railroad is paid to defendants as such Board of State Harbor Commissioners. The laws of the State of California provide that all moneys collected by the Board of State Harbor Commissioners shall be paid into the State Treasury at least once each month, and be credited to the San Francisco Harbor Improvement Fund, except so much thereof as may be necessary to pay the salaries of the officers and employees, office rent, cost of office furniture, books, stationery, lights, fuel, expense of dredging, expense of pile driving and piles, expense of preserving piles and timber, cleaning the wharves and bulkheads, legal and other

incidental expenses, and in addition, ten thousand dollars per month for urgent repairs.

The said laws of the State of California further provide that for all sums of money paid by the Commissioners, except those hereinabove mentioned, drafts shall be drawn by them on the Controller of the State countersigned by the secretary of the Board, and the Controller of the State shall draw his warrant on the State Treasurer, who shall pay the same out of any money in said treasury credited to the San Francisco Harbor Improvement Fund.

II.

That the said State Belt Railroad now is, and for about [35] one year last past, has been operated under the immediate supervision of J. H. Wasserburger, superintendent; that during the year 1925, and at the times involved in all of the causes of action hereinafter more specifically mentioned, the said State Belt Railroad was operated under the immediate supervision of P. J. McGinty, superintendent; that the said superintendents of the said State Belt Railroad were appointed by the said Board of State Harbor Commissioners and hold office at the pleasure of the said Board of State Harbor Commissioners and are under their general supervision and control as such Board of State Harbor Commissioners; that the inspectors, engineers and yardmen employed in the operation of said State Belt Railroad are civil service employees, except in cases of emergency employment due to unusual rush of business; that said regular em-

ployees, in order to qualify as civil service employees, must pass an examination for their respective positions; that their standing on the eligible list is determined by the Board of Examiners, who pass on their merits and rate them accordingly. That said superintendents, inspectors, engineers, yardmen and other employees engaged in the operation of the State Belt Railroad, and all of them, are employees and servants of the State of California. That among said employees were and are five (5) inspectors, whose duty it was and is to make inspections of all appliances covered by the Federal Safety Appliance Acts and the orders of the Interstate Commerce Commission issued pursuant to the provisions thereof; that said inspectors, at the times involved in the said causes of action herein sued upon, ever since have, and still do make repairs to cars found to be defective under the requirements of the Federal Safety Appliance Act of such repairs are of the kind and character that can be made outside of a major repair-shop; that said minor repairs were made by said [36] inspectors where said cars were found to be defective or at the nearest available point; that certain additional repairs were and are made at th Roundhouse of the State Belt Railroad.

That said State Belt Railroad maintains no repair-shops and that the various carriers delivering cars to the State Belt Railroad maintain no repair-shops in their yards, at which the cars are delivered to the State Belt Railroad for handling.

III.

That defendants, William A. Sherman, M. F. Cochrane and J. B. Sanford, did not at the times herein involved, and the present Board of State Harbor Commissioners does not now personally operate or supervise the operation of the State Belt Railroad. That they did not, in any manner, personally participate in, and had no personal knowledge whatsoever of the commission of any of the alleged violations of the Federal Safety Appliance Act set forth in the causes of action, or any of them, in the complaint herein. That if the violations of the Federal Safety Appliance Act alleged in plaintiff's complaint, or any of them, occurred the said violation so occurred without the personal knowledge of defendants, or any of them, and without the consent of defendants, or any of them, and contrary to the orders and instructions of defendants.

IV.

That the State Belt Railroad is located wholly within the City and County of San Francisco, State of California, as aforesaid, and extends the full length of the Embarcadero and Jefferson Street to the Presidio, a distance of approximately five (5) miles. The State Belt Railroad has a physical connection with the tracks of the Southern Pacific Company near the Embarcadero and Townsend Street; its tracks also run on to wharves owned by the State of California, and [37] used by freight-car ferries of the Southern Pacific Company, the Atchison, Topeka and Santa Fe Railway

Company, the Western Pacific Railway Company, and the Northwestern Pacific Railway Company, all common carriers engaged in interstate commerce by railroad. Adjacent to its main line of road and connecting therewith, are certain freight-yards of the four interstate carriers just mentioned, in which all switching is done by the State Belt Railroad, and all cars going into and out of those yards are so hauled by the State Belt Railroad. These yards are owned by the State of California, but by agreements with three of the roads (by lease with the Santa Fe) are used by them. The tracks of the State Belt Railroad also run on to about forty-five (45) wharves owned by the State of California, on which wharves freight is loaded onto and unloaded from cars from and on to steamers going to and coming from, points within and without the State of California. At various points along its line, and with which the State Belt Railroad has trackage connections, are located about one hundred and seventy-five (175) industries. None of the tracks of said State Belt Railroad herein mentioned are ever used by any of the carrier roads and no locomotive, other than the locomotives of the State Belt Railroad, ever moves over any part thereof.

V.

That one hundred and seventy-five (175) industries and forty-five (45) wharves and car ferries referred to are served exclusively by the State Belt Railroad, in so far as the movement of loaded and empty cars are concerned. The State Belt

Railroad moves all carload freight from these industries and wharves destined and consigned to points both within and without the State of California, either on or beyond the lines of the four interstate carriers. It likewise receives from these four carriers, carload shipments of [38] freight, originating within and without the State of California and destined and consigned to industries on the line of the State Belt Railroad, and delivers same to the consignees. It also delivers to the various steamship lines using the forty-five (45) wharves in question, cars, loaded and unloaded, for delivery to the carrier railroads, and likewise receives cars from such carrier roads for delivery to such wharves, for further transportation to points within and without the State of California. The State Belt Railroad also moves over its lines all cars, loaded and empty, between the yards of the four railroads referred to and the various wharves and transfer tracks heretofore mentioned. These last-mentioned cars are either for shippers or consignees who do not have industrial tracks or private sidings of their own, who obtain cars and load them themselves, and hire the State Belt Railroad to transport such cars either to the carrier roads or along the waterfront as the case may be. These cars are loaded by shippers before the State Belt Railroad switches the same and are unloaded by the shippers after the State Belt Line spots them for unloading. No freight is ever loaded or unloaded by said State Belt Railroad. Of all the cars and movements mentioned herein, no discrimination is made

between cars owned by railroads operating within the State of California and those operating wholly without. The State Belt Railroad moves all cars offered to it by the railroads in question, the various steamship lines using the forty-five (45) wharves, and the one hundred and seventy-five (175) industries referred to. The cars used by the steamship companies are turned over to the State Belt Railroad for hauling in the same manner that cars are received from the carrier roads, i. e., the cars are furnished by the steamship companies and are committed to the State Belt Railroad for the movement requested and for no other purpose. For such services performed for the steamship companies [39] in hauling said last-mentioned cars, the usual switching charge is made just as in the matter of cars received from, and delivered to, carrier roads. The State Belt Railroad also moves between the Presidio and the steamship docks, car ferry wharves and transfer tracks heretofore mentioned, cars originating without the State of California and consigned to the Presidio, or *vice versa.*

VI.

The State Belt Railroad is not a party to any through rate for the transportation of any shipment from point of origin to its final destinations, nor does it move same on any through waybill, nor does it issue any waybill or give any receipt whatever. The State Belt Railroad charges a flat rate for moving a car between two points, the rate for a loaded car being a little higher than for an

empty car. These charges are uniform without any consideration as to the destination. It occasionally handles baggage and Pullman cars, principally between the Presidio and the various wharves or the Southern Pacific Transfer tracks in question, for which it also charges a flat rate. For inbound freight shipments, cars are moved to points on the State Belt Railroad on so-called "switch lists," made out by the carrier or steamship line, which shows the number and initials of the car, whether loaded or empty, and points of delivery or final destination on the State Belt Line. The original waybill is retained by the carrier delivering the car to the State Belt Railroad; this shows the point of origin, car number and initials, contents, consignees and ultimate destination on the line of the State Belt Railroad (same as on the "Switch list"), and the through rate to such ultimate destination. The transportation charge for movement by the State Belt Railroad is absorbed by the carrier from whom the car is received. The carrier pays to the State Belt Railroad, a switching charge for moving [40] these cars. On outbound shipments, this "switch list" is made out by an agent of the carrier to whom the car is to be delivered by the State Belt Railroad, and shows the number and initials of the car, whether loaded or empty, and name of shipper. Concurrently with the making of such "switch list," the agent of the carrier to whom the car is to be delivered for further transportation (having received a shipping order from the consignor), makes out

and delivers to said carrier a waybill for the movement of the car to its final destination, showing thereon among other things heretofore mentioned, the consignor (same as on the "switch list") and point of origin as San Francisco, California, and ultimate destination of the car. It is then moved by a State Belt crew on the "switch list," delivered to the carrier road and the carrier transports the car to its destination. In some instances, where the State Belt Railroad shifts or switches a car between two points on its line without delivery to any other carrier, it collects such switching charge from the industry or individual requesting such movement.

VII.

In practically all instances, except intra line movements (last above referred to), the transportation of a car by the State Belt Railroad is made at the request of one of the other carriers. A large majority of the daily movements over the State Belt line for the year ending Dec. 30, 1925, were carload shipments of freight, (a) originating in states other than California and destined to consignees on the State Belt Railroad, or (b) originating on the State Belt Railroad and destined to the consignees in states other than California. Many of the cars so handled during this period both originated, and were destined and consigned to points in states other than California. A considerable portion of the traffic so handled [41] by the State Belt Railroad originated in, or was destined to, foreign countries.

VIII.

That the said State Belt Railroad is operated by the State of California for the purpose of facilitating the commerce of the Port of San Francisco without any profit being derived therefrom, and more often at a loss; that the charges made for the services rendered by said State Belt Railroad are made by defendants pursuant to the authority conferred upon them by Section 2524 of the Political Code of California, which authorized them to collect such an amount of revenue as will enable them to perform the duties required of them by authority of Article IX of said Political Code.

IX.

That all of the facts hereinabove stipulated (except as otherwise expressly stated) were true during, and have reference to, the year 1925, and during the times covered by the causes of action herein involved and hereinafter more specifically mentioned.

X.

The following facts relative to the specific causes of action set forth in said complaint are true, and the following testimony relative to said causes of action would be given by the inspectors of the Interstate Commerce Commission and the inspectors and employees of the State Belt Railroad if called as witnesses:

First Cause of Action: On October 15th, 1925, State Belt Railroad steam locomotive No. 7 switched freight-cars on the standard gauge tracks of the

State Belt Railroad in and about San Francisco, California, including box-cars C. M. & St. P. 592252 and 173547, loaded with furniture from Kiel, Wis., to the Gibralter Warehouse, San Francisco. [42]

That two (2) inspectors of the Interstate Commerce Commission would testify that on the said 15th day of October, 1925, just prior to the beginning of said switching, they measured the height of the drawbar on the rear end of the tender of said locomotive, measured perpendicularly from the level of the tops of the rails to the center line of said drawbar, and that said height of the drawbar on the rear end of the tender of said locomotive so measured was 30 inches; that said measurement was so made on Roundhouse Track No. 2.

That the inspector and employees of the State Belt Railroad would testify that they thereafter, and on the same day, and after said locomotive was moved to another track, measured the height of the drawbar at the rear end of the tender of said locomotive in the manner aforesaid and that said height so measured was 32–½ inches.

Second Cause of Action. The two (2) inspectors of the Interstate Commerce Commission would testify that on October 16, 1925, at 9:25 A. M. of said day, C. & N. W. box-car #118764 was hauled by the State Belt Railroad over its line from Track #2 at Pier 43 to Track #12 in the Powell Street yard, at which time it was in the condition alleged in the Government's complaint; that said car had been carded from Corwith, Ill., to San Francisco, California.

That the inspectors and employees of the State Belt Railroad would testify that said car was received from the Santa Fe Railway at 4:25 A. M. on the 16th day of October, 1925, with part of the uncoupling lever missing from the "A" end of said car; that said car was inspected on its arrival by inspectors of the State Belt Railroad, and again inspected at 9:00 A. M. of said day, and repaired by Santa Fe car inspector at 9:30 A. M. on said day.

Third Cause of Action. The two inspectors of the Interstate Commerce Commission would testify that at about 10:00 A. M. on October 16, 1925, S. P. Gondola freight-car #53261 was hauled by the [43] State Belt Railroad over its standard gauge line at San Francisco, California, from Track #1 to Track #3 and from Track #3 to Ferry Track #13 opposite Pier 43, at which time it was in the condition alleged in the Government's complaint.

The inspectors and employees of the State Belt Railroad would testify that said car was received from the Southern Pacific Company at 5:25 A. M. of said day; that the State Belt Railroad inspector was unable to make repairs.

Fourth Cause of Action. The two (2) inspectors of the Interstate Commerce Commission would testify that at 10:55 A. M. on October 16, 1925, W.P. box-car #15049 was hauled by the State Belt Railroad over its line in and about San Francisco from opposite Pier 43 to the track of the California Packing Corporation's Plant #1, at which time it was in the condition alleged in the Government's complaint.

The inspectors and employees of the State Belt Railroad would testify that the said car was received from the Western Pacific Railroad Company at about said time on October 16, 1925, in the said condition alleged in the Government's complaint.

Fifth Cause of Action. The two inspectors of the Interstate Commerce Commission would testify that at 8:20 A. M. on October 17, 1925, W. P. Box Car #30114 was discovered to be defective on W. P. Barge # 2 at the Ferry slip; that at 8:37 A. M. said car was hauled by the State Belt Railroad over its line in and about San Francisco from said W. P. Barge to the Chestnut Street yard of the Western Pacific R. R. Co., at which time it was in the condition alleged in the Government's complaint.

The inspectors and employees of the State Belt Railroad would testify that said car was received from the Western Pacific R. R. Co. at 8:00 A. M. on October 17, 1925, in the condition alleged [44] in the Government's complaint; that it was thereafter, and on said day, inspected and repaired by the inspector of the State Belt Railroad.

Sixth Cause of Action. The two inspectors of the Interstate Commerce Commission would testify that about 9:30 A. M. on October 19, 1925, S. F. I. & M. Flat Car #4020 was hauled by the State Belt Railroad over its line in and about San Francisco from opposite Pier #21 to the track of the Wire Works Lead Company, at which time it was in the condition alleged in the Government's complaint.

The inspectors and employees of the State Belt Railroad would testify that said car was received by the State Belt Railroad from the San Francisco Iron and Metal Company; that said company was the owner of said car and makes its own repairs.

Seventh Cause of Action. The two inspectors of the Interstate Commerce Commission would testify that at about 7:40 A. M. on October 22, 1925, U. C. R. Gondola Car #20031 was hauled by the State Belt Railroad over its line in and about San Francisco from W. P. Barge to Ferry Track #3, at which time it was in the condition alleged in the Government's complaint; that said car was, at said time, loaded with coal from Spring Canyon, Utah, to San Francisco; that said car was first discovered to be defective when received from W. P. Barge #2 at Pier 43.

The inspectors and employees of the State Belt Railroad would testify that said car was received from the W. P. Railroad at about 7:40 A. M. on said day in the condition alleged in the Government's complaint; that said car was inspected and repaired on said day by the inspector of the State Belt Railroad.

Eighth Cause of Action. That two inspectors of the Interstate [45] Commerce Commission would testify that on the morning of October 23, 1925, U. C. M. X. Flat Car #69087 was hauled by the State Belt Railroad over its line in and about San Francisco from the S. F. Iron & Metal Company's yard to Track #1 of the new yard of the Northwestern Pacific Company, at which time it was in

the condition alleged in the Government's complaint; that said car was again inspected on October 24, 1925, on the Simmon's Bedstead Manufacturing Company's track, and found to be in the same defective condition.

The inspectors and employees of the State Belt Railroad would testify that said car was received from the United Commercial Company on October 23, 1925, in a defective condition; that said car was handled carefully and returned to said company, who make their own repairs.

Ninth Cause of Action. That two inspectors of the Interstate Commerce Commission would testify that at about 9:00 A. M. on October 26, 1925, S. P. Box Car #84500 was hauled by the State Belt Railroad over its line in and about San Francisco, from opposite Pier 19 to the Sulphur track, at which time it was in the condition alleged in the Government's complaint; that said car was first discovered to be defective opposite Pier 19 as it was being received from the S. P. Company; that said car had been "Bad ordered" by the S. P. Company at 8:00 A. M. on October 26, 1925, for said defect.

XI.

That all the repairs made to the cars hereinabove mentioned by the State Belt Railroad inspectors were made shortly after the completion of the movements alleged by the Government.

XII.

It is further stipulated that the defendants herein

named, to wit, William A. Sherman, M. F. Cochrane and J. B. Sanford, are not now members of the Board of State Harbor Commissioners of the [46] State of California, and said defendants do not, at the present time, constitute the said Board of State Harbor Commissioners.

That subsequent to the times mentioned in the causes of action herein involved, and each and all of them, said defendants, and each and all of them, were succeeded in office by C. L. Tilden, Frank C. Sykes and Paul Schrarrenberg, and said C. L. Tilden, Frank C. Sykes and Paul Scharrenberg ever since their said appointments, have been, and now are, the duly qualified and acting Board of State Harbor Commissioners of the State of California.

VIII.

It is further stipulated that either plaintiff or defendants, or each of them, may adduce such further evidence, oral or documentary, and not inconsistent herewith, at the trial of the above-entitled action as they, or either of them, may desire.

GEORGE J. HATFIELD,
United States Attorney,
RICHARD M. LYMAN, Jr.,
Assistant United States Attorney,
M. C. LIST,
Special Assistant to the United States Attorney,
Attorneys for Plaintiff.
LEON E. MORRIS,
Attorney for Defendants. [47]

AND BE IT FURTHER REMEMBERED that thereafter, the said Court ordered that judgment be entered for plaintiff, to which ruling and order of the Court, the defendants then and there duly excepted, and hereby designate as

DEFENDANTS' EXCEPTION No. 1.

AND BE IT FURTHER REMEMBERED that thereafter and pursuant to said last mentioned order of said Court, to wit, on the 25th day of February, 1929, judgment was entered in favor of plaintiff and against defendants, to which judgment, defendants then and there duly excepted, and hereby designate as

DEFENDANTS' EXCEPTION No. 2.

Now within the time allowed by law and stipulation of counsel, defendants present the foregoing as their proposed bill of exceptions in the above-entitled action, and pray that the same may be settled and allowed.

Dated: May 10th, 1929.

LEON E. MORRIS,
Attorney for Defendants. [48]

STIPULATION FOR ALLOWANCE OF BILL OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the foregoing bill of exceptions was presented by defendants within the time allowed by law therefor and that the same is a true and correct

copy of the proceedings had at the trial of the above-entitled action, and that the same may be certified, allowed and settled, as provided by law and the practice of said Court, by Honorable A. F. St. Sure, United States District Judge, who presided at the trial of said cause.

Dated: May 23d, 1929.

GEORGE J. HATFIELD,
United States Attorney,
By A. C. WOLLENBERG,
Assistant United States Attorney,
LEON E. MORRIS,
Attorney for Defendants.

ORDER SETTLING AND ALLOWING BILL OF EXCEPTIONS.

I, the undersigned, Judge of the District Court of the United States, do hereby certify that the foregoing bill of exceptions, having been presented within the time allowed by law therefor, is a true and correct copy of the proceedings had at the trial of said action, and do hereby settle and allow the same and order that said bill of exceptions be filed with the Clerk of this court.

Dated: May 23d, 1929.

A. F. ST. SURE,
United States District Judge.

Receipt of a copy of the within defendants' proposed bill of exceptions is hereby admitted this 11 day of May, 1929.

GEO. J. HATFIELD,
United States Attorney,
Attorney for Plaintiff.

[Endorsed]: Filed May 11, 1929. [49]

[Title of Court and Cause.]

PETITION FOR APPEAL.

The above-named defendants, William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, considering themselves aggrieved by the judgment rendered and entered in the above-entitled action on February 25th, 1929, which said judgment is to the effect that plaintiff, United States of America do have and recover of and from William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, defendants, the sum of nine hundred ($900.00) dollars, together with costs of suit, hereby appeal from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and said defendants pray that this, their appeal to the said United States Circuit Court of Appeals for the Ninth Circuit, may be allowed,

and that a transcript of the record, papers and proceedings upon which said judgment was made, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit.

Dated: San Francisco, California, May 23d, 1929.

LEON E. MORRIS,
Attorney for Defendants.

[Endorsed]: Filed May 23, 1929. [50]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Come now defendants above named, and file the following assignment of errors upon which they will rely upon the prosecution of their appeal in the above-entitled action from the judgment entered therein on the 25th day of February, 1929:

I.

That the United States District Court erred in overruling defendants' demurrer (entitled motion to dismiss) for the following reason:

(a) Plaintiff's complaint does not state facts sufficient to constitute a cause of action against defendants, either in their official capacity as members of the Board of State Harbor Commissioners of the State of California, or in their individual capacity.

(b) Plaintiff's complaint does not state facts sufficient to constitute a cause of action against de-

fendants in their individual capacity, in that it does not state any acts or negligence on the part of defendants individually, or any acts in violation of any statute imposing, or authorizing the imposition of any penalty upon any individual. [51]

(c) That the said District Court had no jurisdiction over defendants in their official capacity, as members of the Board of State Harbor Commissioners, operating the State Belt Railroad, in that said Commissioners in so operating said State Belt Railroad, were acting as a political arm or agency of the State of California, and were performing a Governmental function.

II.

That the evidence was and is insufficient to justify the decision and judgment of said District Court.

III.

That the evidence was and is insufficient to justify the decision and judgment of said District Court in the following particulars:

(a) That there is no evidence that defendants had any personal connection whatsoever with any violations of law.

(b) That there is no evidence of any individual tort committed by defendants or any of them.

(c) That there is no evidence that defendants individually are a common carrier.

IV.

That the said judgment of the District Court is

contrary to the evidence in that it appears from said evidence that any violations of the Federal Safety Appliance Act alleged, occurred without the personal knowledge of defendants or any of them, and without the consent of defendants or any of them and contrary to the orders and instructions of defendants.

V.

That the said District Court erred in rendering and entering judgment against defendants in the following particulars:

1. Said judgment against defendants in their official capacity, as members of the Board of State Harbor Commissioners of the State [52] of California, operating the State Belt Railroad is erroneous in that

(a) Said District Court has no jurisdiction over an action against the State of California, such jurisdiction being original in the Supreme Court of the United States under the Constitution of the United States.

(b) The United States of America has no authority to impose a fine or penalty upon the State of California.

2. Said judgment against defendants, individually, is erroneous in that

(a) Said defendants individually are not a common carrier and the Federal Safety Appliance Act imposes a penalty upon the common carrier only, and not upon its officers or agents.

(b) The acts complained of arose in the oper-

ation of the State Belt Railroad in the course of defendants' official duties and were acts with which they had no personal connection whatsoever, and defendants are not individually and personally liable for torts of their subordinate officers, employees or agents.

VI.

That said District Court erred in adjudging that the Federal Safety Appliance Act imposes or authorizes the imposition of a penalty upon any persons individually.

VII.

That said District Court erred in adjudging that these defendants, as members of the Board of State Harbor Commissioners, were liable for acts in the nature of torts committed by subordinate officers, with which said defendants had no personal connection whatsoever.

VIII.

That said District Court erred in adjudging that it had jurisdiction over an action against officers of the State of California acting in their official capacity, in operating the State Belt [53] Railroad, such jurisdiction being original in the Supreme Court of the United States.

IX.

That said judgment of said District Court is erroneous in that it imposes a fine or penalty upon officers of the State of California for acts occurring in the regular performance by them of a Governmental function of the State of California.

X.

That said District Court erred in rendering and entering judgment for plaintiff in said action in that said judgment is contrary to law and the facts.

WHEREFORE, said defendants pray that the judgment of the District Court of the United States for the Northern District of California, Southern Division hereinabove referred to, be reversed, and for such other and further relief as may be proper in the premises.

LEON E. MORRIS,
Attorney for Defendants.

[Endorsed]: Filed May 23, 1929. [54]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING AMOUNT OF BOND.

On motion of Leon E. Morris, attorney for defendants above named, IT IS ORDERED that the appeal of said defendants to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment rendered and entered in the above-entitled action on February 25th, 1929, be, and the same is hereby allowed and that a duly authenticated transcript of the record, papers and proceedings on which said judgment was made be sent to said United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that said defendants file with the Clerk of this court a good and sufficient bond in the sum of $1,250.00 conditioned as required by law, to cover prosecution of this appeal and damages, judgment and costs, and that said bond on appeal shall operate as and constitute supersedeas bond.

Dated: May 23d, 1929.

A. F. ST. SURE,
United States District Judge.

Approved:

FRANK S. DIETRICH,
Circuit Judge.

May 24th, 1929.

[Endorsed]: Filed May 32, 1929. [55]

(Title of Court and Cause.)

UNDERTAKING ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That Hartford Accident and Indemnity Company, of Hartford, Connecticut, a corporation duly organized and existing under and by virtue of the laws of the State of Connecticut, and duly licensed to transact business in the State of California, is firmly bound unto United States of America, plaintiff in the above-entitled cause, in the sum of twelve hundred fifty and no/100 ($1250.00) dollars, to be paid unto the said United States of America, for

which payment well and truly to be made, the Hartford Accident and Indemnity Company binds itself, its successors and assigns, firmly by these presents.

Signed, sealed and dated this 24th day of May, 1929.

The condition of the above obligation is such that whereas the said William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California operating the State Belt Railroad, defendants in the above-entitled cause, have appealed to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment of the above-entitled court entered in said cause on the 25th day of February, 1929.

Now, therefore, the condition of the above obligation is that if the said William A. Sherman, M. F. Cochrane, and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California operating the State Belt Railroad, shall prosecute their said appeal to effect and answer all damages and costs which may be adjudged [56] if they fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

It is further stipulated as a part of the foregoing bond that in case of the breach of any condition thereof, the above-named District Court may, upon notice to the surety above-named, proceed summarily in said proceedings to ascertain the amount

which said surety is bound to pay on account of such breach, and render judgment therefor against said surety and award execution therefor.

HARTFORD ACCIDENT AND INDEMNITY COMPANY.

[Seal]

By RUSSELL McNUTT,
Attorney-in-fact.

This bond approved as to form, amount and sufficiency of surety.

May 24/29.

FRANK S. DIETRICH,
Judge of the U. S. Circuit Court.

[Endorsed]: Filed May 24, 1929. [57]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare record on appeal to the Circuit Court of Appeals for the Ninth Circuit, in the above-entitled matter, and include therein the following papers and documents:

Complaint.

Demurrer to complaint (entitled motion to dismiss).

Minute order overruling demurrer.

Answer.

Stipulation of facts and waiver of jury.

Judgment.

Bill of exceptions.
Petition for appeal.
Assignment of errors.
Order allowing appeal and fixing amount of bond.
Bond on appeal.
Citation on appeal with admission of service.
This praecipe.

LEON E. MORRIS,
Attorney for Defendants.

Receipt of a copy of the within praecipe is hereby admitted this 24 day of May, 1929.

GEO. J. HATFIELD,
Attorney for Plaintiff.

[Endorsed]: Filed May 24, 1929. [58]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 58 pages, numbered from 1 to 58, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is $28.00; that the said amount

was paid by the appellant and that the original citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 4th day of June, A. D. 1929.

[Seal] WALTER B. MALING,
Clerk United States District Court for the Northern District of California. [59]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.
The President of the United States, to the United States of America, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein William A. Sherman, M. F. Cochrane and J. B. Sanford, constituting the Board of State Harbor Commissioners of the State of California, operating the State Belt Railroad, are appellants and you are appellee, to show cause, if any there be, why the judgment rendered and entered against said appellants as in the said order allowing appeal

mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable A. F. ST. SURE, United States District Judge for the Northern District of California, Southern Division, this 23d day of May, 1929.

A. F. ST. SURE,
United States District Judge. [60]

Service and receipt of a copy of the within citation on appeal is hereby admitted this 24 day of May, 1929.

GEO. J. HATFIELD,
Attorney for Plaintiff.

[Endorsed]: Citation on Appeal. Filed May 24, 1929.

[Endorsed]: No. 5839. United States Circuit Court of Appeals for the Ninth Circuit. William A. Sherman, M. F. Cochrane and J. B. Sanford, Constituting the Board of State Harbor Commissioners of the State of California, Operating the State Belt Railroad, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed June 4, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 5839.

WILLIAM A. SHERMAN, M. F. COCHRANE and J. B. SANFORD, Constituting THE BOARD OF STATE HARBOR COMMISSIONERS of THE STATE OF CALIFORNIA, Operating THE STATE BELT RAILROAD,

Appellants,

vs.

THE UNITED STATES OF AMERICA,

Appellee.

STIPULATION RE PRINTING OF RECORD.

WHEREAS, the stipulation entitled "Waiver of jury and stipulation of facts" appears twice in full in the record herein, to wit, once as such stipulation commencing on the top of page 18 and ending at the bottom of page 31 of said record, and a second time as a part of the bill of exceptions commencing on line 13, page 34 and ending on line 29, page 47 of said record,—

NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the respective parties hereto pursuant to the provisions of Rule 23 of the said United States Circuit Court of Appeals, that the said stipulation constituting pages 18 to 31 inclusive of said record need not be printed and that said stipula-

tion constituting a part of the said bill of exceptions, to wit, from line 13 of page 34 to line 29 of page 47 inclusive of said record, shall be printed and shall constitute the said stipulation entitled "Waiver of jury and stipulation of facts" for all purposes of this appeal.

Dated: July 15th, 1929.

LEON E. MORRIS,
Attorney for Appellants.
GEO. J. HATFIELD,
United States Attorney.
By ALBERT C. WOLLENBERG,
Assistant United States Attorney,
Attorneys for Appellee.

[Endorsed]: Stipulation Relating to Printing of Record. Filed Jul. 15, 1929. Paul P. O'Brien, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 5839

WILLIAM A. SHERMAN et al., Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

No. 5904

WILLIAM A. SHERMAN, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—Oct. 30, 1929

Ordered appeal in each of above causes argued by Mr. Edward M. Jaffa, counsel for the appellants in each of above causes, and by Mr. Lucas E. Kilkenny, Assistant United States Attorney, counsel for the appellee, and submitted to the court for consideration and decision.

IN UNITED STATES CIRCUIT COURT OF APPEALS

No. 5839

WILLIAM A. SHERMAN et al., etc., Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

ORDER DIRECTING FILING OF CERTIFICATE CERTIFYING CERTAIN QUESTIONS OR PROPOSITIONS OF LAW TO THE SUPREME COURT OF THE UNITED STATES—Nov. 12, 1929

By direction of the Court, Ordered certificate certifying certain questions or propositions of law to the Supreme Court of the United States under Section 239 of the Judicial Code be filed, and that a certified copy of said certifi-

cate be forthwith forwarded by the Clerk of this Court to the Clerk of the Supreme Court of the United States.

Certificate of the United States Circuit Court of Appeals for the Ninth Circuit certifying questions of law to the Supreme Court of the United States Under Section 239, omitted in printing here as it appears under separate cover.

Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER GRANTING MOTION TO BRING UP ENTIRE RECORD AND CAUSE—May 5, 1930

On consideration of the motion for a writ of certiorari to bring up the entire record and cause,

It is now here ordered by this Court that the said motion be, and the same is hereby, granted.

FILE COPY

APR 25 1930

No. ~~136~~ 14

In the Supreme Court of the United States

OCTOBER TERM, 1929

WILLIAM A. SHERMAN, M. F. COCHRANE, AND J. B. SANFORD, CONSTITUTING THE BOARD OF STATE HARBOR COMMISSIONERS OF THE STATE OF CALIFORNIA, OPERATING THE STATE BELT RAILROAD, APPELLANTS (BELOW)

v.

THE UNITED STATES OF AMERICA, APPELLEE (BELOW)

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT MOTION TO BRING UP THE ENTIRE RECORD AND CAUSE